



Signed: November 16, 2006

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
*Leslie Tchaikovsky*  
**LESLIE TCHAIKOVSKY**  
U.S. Bankruptcy Judge

In re  
JOHANNA P. WELTY, etc.,  
Debtor.

No. 04-41166 TD  
Chapter 7

LOIS I. BRADY, Trustee,  
Plaintiff,

A.P. No. 04-4182 AT

vs.

FRANK A. WELTY, III,  
Defendant.

#### MEMORANDUM OF DECISION

Lois I. Brady (the "Trustee"), chapter 7 trustee in the above-captioned bankruptcy case, moves for summary judgment in the above-captioned adversary proceeding, objecting to the amended claim filed by defendant Frank A. Welty, III ("Welty") on May 5, 2006 (the "Amended Claim"). For the reasons stated below, the Trustee's motion will be granted, and the Amended Claim will be disallowed as a matter of law.

#### SUMMARY OF FACTS AND PROCEDURAL HISTORY

Johanna A. Welty (the "Debtor") filed a voluntary petition seeking relief under chapter 7 of the Bankruptcy Code on March 4, 2004. At the time she filed the petition, although her marital relationship with Welty had been dissolved, their property rights

1 had not yet been finally determined. Debtor and Welty were still  
2 the co-owners of a home (the "Residence"). The Residence had been  
3 ordered to be sold by the family law court, but no sale had yet  
4 taken place.

5 A state court judge pro tem (the "family court judge") had  
6 conducted a trial on various issues in the dissolution proceeding  
7 over several days in December 2002. She had issued an order  
8 resolving some of these issues which was filed on March 20, 2003  
9 (the "March 20 Order"). Among other things, she granted Welty  
10 \$156,000 in reimbursement rights from the marital community pursuant  
11 to California Family Code § 2640 for his separate property  
12 contribution to the Residence. After further hearings, the family  
13 law judge issued another order, which was filed on April 16, 2003  
14 (the "April 16 Order"). The April 16 Order established various  
15 liens against the Residence, with specified priorities.

16 On March 1, 2004, Welty recorded an abstract of judgment (the  
17 "Abstract") against the Residence. The Abstract referenced the  
18 March 20 Order and asserted the right to a judgment amount of  
19 \$224,224.18. Three days later, the Debtor filed her chapter 7  
20 bankruptcy petition. On or about July 14, 2004, the Court  
21 authorized the sale of the Residence to a third party for \$1.4  
22 million.

23 The Residence was sold, and the first deed of trust, which was  
24 held by Greenpoint Mortgage, was paid from the proceeds. The  
25 property taxes encumbering the Residence and the costs of sale were  
26 also paid. The remaining proceeds were divided between the Trustee

1 and Welty, the Trustee receiving the Debtor's share. The Trustee  
2 held the Debtor's share, subject to the remaining liens and other  
3 charges against that share, including Welty's claim of entitlement  
4 to additional payment.

5 On February 10, 2005, this Court held a hearing on an earlier  
6 motion for summary judgment filed by the Trustee. Thereafter, the  
7 Court issued a memorandum of decision, denying the motion in part  
8 but otherwise disposing of most of the issues raised by the  
9 complaint. Based on this decision, on June 7, 2005, the Court  
10 ordered the Trustee to pay Welty \$189,700 out of the estate's share  
11 of the sale proceeds. The Trustee moved for reconsideration,  
12 arguing that this amount should be reduced to \$156,025. On July 11,  
13 2005, the Court granted the Trustee's motion for reconsideration,  
14 and a check was issued by the Trustee to Welty in this lesser  
15 amount.

16 On May 5, 2006, Welty filed the Amended claim (the "Amended  
17 Claim"), asserting the right to receive additional payments from the  
18 estate's share of the sale proceeds based on the March 20 and April  
19 16 Orders. In her current motion for summary judgment, the Trustee  
20 objects to the Amended Claim. Welty did not file a substantive  
21 objection to the Trustee's motion. His only response to the motion  
22 was a last minute letter request for a continuance of an unspecified  
23 length until such time as he could afford to hire an attorney. The  
24 Court denied Welty's request. The motion was presented at a hearing  
25 on October 24, 2006 and was taken under submission.  
26

## DISCUSSION

### A. APPLICABLE LAW

A motion for summary judgment should be granted when the Court determines that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 7056); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party must make a prima facie showing that summary judgment is appropriate. Celotex, 477 U.S. at 322. The party opposing the motion bears the burden of overcoming the prima facie case. Id. at 324.

If the moving party adequately supports the motion for summary judgment, and the adverse party fails to respond, the Court shall enter summary judgment, if appropriate, against the adverse party. Fed. R. Civ. P. 56(e) (made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 7056). However, the Court may not grant a motion for summary judgment simply because the nonmoving party failed to file an opposition. Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993). All doubts concerning the existence of a genuine factual issue must be resolved in favor of the party opposing the motion for summary judgment. British Airways Board v. Boeing Co., 585 F.2d 946, 951 (9th Cir. 1978).

If the Court is unable to determine the entire claim by summary judgment, the Court may summarily adjudicate any portion of the claim as to which there is no genuine factual issue. Fed. R. Civ.

1 P. 56(d) (made applicable in bankruptcy proceedings by Fed. R.  
2 Bankr. P. 7056).

3 A properly executed and filed proof of claim constitutes prima  
4 facie evidence of the validity and amount of the claim. Fed. R.  
5 Bankr. P. 3001(f). The party objecting to the claim must present  
6 sufficient evidence to overcome the prima facie evidence. In re  
7 Holm, 931 F.2d 620, 623 (9th Cir. 1991); In re Consolidated Pioneer  
8 Mortgage, 178 B.R. 222, 226 (9th Cir. 1995), aff'd 91 F.3d 151 (9th  
9 Cir. 1996).

#### 10 **B. DECISION**

11 In the Amended Claim, Welty asserts the right to an unsecured  
12 claim against the estate for \$328,580 less the \$156,025 already paid  
13 for a net claim of \$172,580. Attached to the Amended Claim is a  
14 schedule (the "Claim Schedule") in which Welty lists the numerous  
15 items upon which the Amended Claim is based. In many instances, he  
16 cites the paragraph of the family court order upon which he bases  
17 the particular elements of his claim.

18 Welty asserts the right to interest on each of the items at the  
19 rate of ten percent per annum. He calculates the amount of the  
20 interest on each from the date of the order purportedly giving him  
21 the right to the payment amount through May 31, 2006: i.e., a  
22 hypothetical payment date. He also provides a daily interest amount  
23 so that figure may be adjusted based on the actual payment date.

24 The Trustee objects to the Amended Claim on various grounds and  
25 seeks summary judgment with respect to her objections. The Court  
26 will address each of her objections in turn.

1  
2       **1. Estate's Right to Credit for \$78,000 Overpayment**

3       The Trustee contends that the Court miscalculated the portion  
4 of the net sale proceeds that should have been paid to Welty based  
5 on the family court order regarding Welty's \$156,025 separate  
6 property contribution to the Residence. She notes that the family  
7 court judge ordered the *community* to reimburse Welty for this  
8 contribution, not the Debtor. Thus, either the reimbursement should  
9 have come from community property or, to the extent it came from the  
10 Debtor's separate property, Welty was only entitled to half this  
11 amount: i.e., \$78,012.50. Thus, according to the Trustee, the  
12 estate is entitled to a credit of \$78,012.50 against any amounts  
13 that Welty would otherwise be owed.

14       As noted above, Welty did not file a substantive opposition to  
15 the Trustee's motion for summary judgment. The evidence before the  
16 Court--i.e., the family court order--is sufficient to support the  
17 Trustee's contention, and the Trustee's argument appears legally  
18 sound. As a result, the Trustee's motion will be granted with  
19 respect to this issue, and the bankruptcy estate will be entitled to  
20 an offset of \$78,012.50 against any amounts found to be allowable  
21 pursuant to the Amended Claim.

22       **2. Welty's Right to Interest**

23       Twenty-eight of the items listed in the Claim Schedule are for  
24 interest. As noted above, the amounts included in the claim  
25 calculation are for interest from the date of the relevant order  
26 through May 31, 2006. The Trustee objects to the allowance any

1 amount of interest in the Amended Claim. She notes that Welty has  
2 no right to interest by contract or statute. She notes that Cal.  
3 Civ. Code § 3289, which provides for a ten percent per annum default  
4 rate of interest on breach of contract claim, has no application  
5 here since Welty's claim is not based on a contract. Similarly, she  
6 notes that Cal. Civ. Proc. Code § 685.010, which provides for a ten  
7 percent per annum judgment rate of interest, does not apply because  
8 no money judgment was ever entered. The family court orders were  
9 simply interlocutory orders, resolving some but not all of the  
10 issues in the dissolution proceeding. Finally, the Trustee asserts  
11 that, because Welty's claim is unsecured, pursuant to 11 U.S.C. §  
12 506(b), he is not entitled to any interest accruing on his claim  
13 after the petition date: i.e., March 4, 2004.

14 The Trustee is correct that a party asserting an unsecured  
15 claim against a bankruptcy estate is not entitled to post-petition  
16 interest. See 11 U.S.C. § 502(b)(2); 11 U.S.C. § 506(b). Thus,  
17 Welty's claim for interest accruing after March 4, 2004 will be  
18 disallowed. With respect to the interest accruing before March 4,  
19 2004, the Court agrees that neither Cal. Civ. Code § 3289 nor Cal.  
20 Civ. Proc. Code § 650.010 provides support for such a claim.

21 However, the Trustee does not address the applicability of Cal.  
22 Civ. Code § 3287. Section 3287 provides that every person entitled  
23 to damages in an amount that is certain or is capable of being made  
24 certain by calculation is entitled to recover interest on that  
25 amount from the date the party's right becomes fixed. Some elements  
26 of the Amended Claim are based on amounts made certain in the family

1 court orders. To that extent, the Court concludes that § 3287 gives  
2 Welty a right to interest on the amounts in question from the date  
3 of entry of the orders through March 4, 2004.<sup>1</sup>

4 Although § 3287 does not specify the rate of interest to which  
5 the claimant is entitled, establishing this rate is within the  
6 Court's discretion. The judgment rate of ten percent per annum  
7 appears reasonable. However, the bankruptcy estate is entitled to  
8 include in its claim of offset interest on the \$78,012.25  
9 overpayment made to Welty from the sale proceeds from the date of  
10 payment to the date of this decision.

11 Given that right, the Court is doubtful that the award of  
12 interest to Welty on some portions of the Amended Claim will affect  
13 the outcome of this decision. However, the Court hereby directs the  
14 Trustee to calculate the interest to which Welty is entitled, based  
15 on the Court's rulings in this decision, and the interest to which  
16 the estate is entitled as an offset and to file a statement of this  
17 calculation to the Court two weeks prior to the status conference  
18 scheduled below.

19 **3. Specific Items of the Amended Claim**

20 **a. Line 4 Item**

21 On Line 4 of the Claim Schedule asserts a claim for \$5,000. It  
22 refers to paragraph 22 of the March 20 Order. Paragraph 22 states  
23 that the parties are to pay equally the fees and costs of the family  
24

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25 <sup>1</sup>Cal. Fam. Code § 2640(b) specifically prohibits the award of  
26 interest on a claim for reimbursement for a party's separate  
property contribution to the acquisition of community property.  
However, Welty has not requested interest with respect to this  
portion of his claim.



1 court judge. It acknowledges the receipt of \$5,000 in payment of  
2 the family court judge's fees and expenses from Alta Welty. It is  
3 undisputed that Alta Welty is Welty's mother.

4 The Trustee concedes that, pursuant to the March 20 Order, the  
5 community was required pursuant to reimburse Alta Welty \$5,000 from  
6 the Residence sale proceeds. However, she contends that the estate  
7 is only required to pay half this amount or \$2,500. Thus, she  
8 objects to only \$2,500 of the claim.

9 The Trustee's rationale with respect to this portion of the  
10 Amended Claim is the same as with respect to the alleged overpayment  
11 of \$78,012.50. As noted above, the Court is persuaded by this  
12 rationale. However, there is no evidence that Welty has standing to  
13 assert his mother's claim. To the contrary, Alta Welty has filed  
14 her own proof of claim for \$5,000. The Trustee will probably wish  
15 to file an objection to \$2,500 of this claim if she has not already  
16 done so.

17 **b. Lines 6 and 7**

18 Line 6 of the Claim Schedule asserts the right to \$258 for half  
19 of the community's cost for Marburger's tax calculations. Line 7  
20 asserts the right to \$617 for half of the community's cost for Kinko  
21 copies ordered made by the Debtor's attorney. There is no reference  
22 in the Schedule to any paragraph in either of the family court  
23 orders as a basis for these elements of the Amended Claim. However,  
24 the Trustee declines to challenge them given their nominal amounts.  
25 As a result, the Court will summarily adjudicate that these amounts  
26 are allowable.

**c. Lines 8, 10, 12, 14, 16, 18, 20, 22, and 26**

The amounts set forth on Lines 8, 10, 12, 14, 16, 18, 20, 22, and 26 all relate to the Greenpoint Mortgage loan which encumbered the Residence and was paid off when the Residence was sold. In support of these elements of the Amended Claim, Welty relies on paragraph 2 of the April 16 Order. This paragraph required the Debtor, while she was living in the Residence, to collect the rents, pay the expenses, pay the reasonable value for her occupancy of a portion of the Residence, and to provide a monthly accounting. These elements of the Amended Claim all appear to relate to the Debtor's failure to pay some of the necessary expenses. The specific items are as follows:

Line 8 \$1,193, for interest on payoff of Greenpoint Mortgage loan from 6/24/04 to 7/27/04 at the rate of \$72.29000 per day

Line 10 \$371.60 in late fees paid to Greenpoint Mortgage

Line 12 \$2,245 for forced insurance charges

Line 14 \$10.50 in recording fees

Line 16 \$22.50 in foreclosure fees

Line 18 \$20 for fax charges and demand fees relative to the Greenpoint Mortgage foreclosure.

Line 20 \$17.50 in other fees paid to Greenpoint Mortgage

Line 22 \$12,924.20 in interest paid to Greenpoint Mortgage

Line 26 \$4,009 in unpaid property taxes

These items of the Amended Claim will be disallowed as a matter of law. As the Trustee points out, some of these charges are simply community obligations which were paid from the sale proceeds of the

1 Residence before those proceeds were divided. Thus, the bankruptcy  
2 estate has borne its proper share.

3 To the extent the charges are for expenses that would not have  
4 been incurred had the Debtor performed her obligations under  
5 paragraph 2 of the April 16 Order, Welty has failed to supply  
6 sufficient evidence to support his right to the amounts claimed.  
7 The April 16 Order is not sufficient for this purpose. Although  
8 that order imposed certain duties on the Debtor, it did not specify  
9 the consequence of the Debtor's failure to perform those duties.

10 Moreover, no evidence has been provided in support of the  
11 Amended Claim that the Debtor did fail to perform these duties, that  
12 her failure was wrongful, or that these charges ensued as a result  
13 of that failure. The Amended Claim is not executed under penalty of  
14 perjury. Therefore, it does not, standing alone, create a prima  
15 facie case for allowance. See Fed. R. Bankr. Proc. 3001(f). Thus,  
16 this portion of the Amended Claim will be disallowed.

17 **d. Line 24**

18 Line 24 of the Claim Schedule asserts the right to \$6,000 in  
19 principal reduction due to Johanna's failure to pay the Greenpoint  
20 Mortgage. In support of this item, Welty refers to paragraph 2A-C  
21 of the April 16 Order. As noted above, these paragraphs of the  
22 April 16 Order assign Johanna the duty of collecting the rents and  
23 paying the expenses of the Residence, including the mortgage  
24 payments.

25 Welty has provided no evidence to support his claim that Welty  
26 failed to pay the mortgage payments, that her failure was wrongful,

1 or that, as a result of that failure, Welty was damaged in the  
2 amount of \$6,000. As noted above, the form of the Amended Claim is  
3 insufficient to establish a prima facie case for the validity and  
4 amount of the claim without further evidence. Thus, the Court will  
5 disallow this portion of Welty's claim as a matter of law.

6 The Trustee contends that, in any event, this claim is without  
7 merit. She notes that paragraph 6 of the March 20 Order charges the  
8 community with nonpayment of the mortgage and the housing expense.  
9 Thus, according to the Trustee, there is no basis for adding an  
10 additional charge of \$6,000, assessed only against the estate's  
11 share of the net sale proceeds.

12 Paragraph 6A of the March 20 Order supports this contention to  
13 some extent. It charges the Debtor with collecting \$75,365 in rent  
14 and \$3,200 for nonpayment of the April 10 taxes for a total of  
15 \$78,565. It credits her for paying \$58,370 on the mortgage, \$12,800  
16 in property taxes, and \$8,500 in rental expenses for a total of  
17 \$79,670 for an excess expenditure of \$4,305. However, Paragraph 6B  
18 credits Welty with paying \$3,200 in property taxes, thus reducing  
19 the Debtor's excess expenditure on behalf of the community to  
20 \$1,105. Thus, the Court concludes that, with respect to these  
21 charges and credits, the estate is entitled to a offset against any  
22 portion of the Amended Claim that is allowed of half this amount:  
23 i.e., \$552.50.<sup>2</sup>

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24  
25 <sup>2</sup>Paragraph 6C charges the Debtor \$3,200 for nonpayment of the  
26 April taxes. However, it also notes that these taxes have been  
paid out of the refinancing. Thus, they need not be taken into  
account here.

1           **e. Line 28**

2           Line 28 of the Claim Schedule asserts the right to \$6,671 based  
3 on an advance from the community's trust funds. In support of this  
4 item, Welty refers to paragraph 5 of the March 20 Order. Paragraph  
5 5 of the March 20 Order charges the Debtor with having received  
6 \$6,671 in community trust funds. The Trustee concedes that Welty is  
7 entitled to a claim against the estate for half this amount: i.e.,  
8 \$3,335.50. Thus, the Amended Claim will be allowed in this amount.

9           **f. Line 30**

10          Line 30 of the Claim Schedule asserts the right to \$3,200. It  
11 does not describe the nature of the claim. However, it refers to  
12 paragraph 6B of the March 20 Order. Paragraph 6B credits Welty with  
13 paying \$3,200 in property taxes. However, this credit has already  
14 been accounted for in connection with the portion of the Amended  
15 Claim listed on Line 24. See section B-3-d above. As a result,  
16 this portion of the Amended Claim will be disallowed.

17          **g. Line 32**

18          Line 32 of the Claim Schedule asserts the right to \$1,600. It  
19 does not describe the nature of the claim. However, it refers to  
20 paragraph 6C of the March 20 Order. Paragraph 6C of the March 20  
21 Order charges the Debtor \$3,200 for her nonpayment of the April 10  
22 taxes. As with the claim asserted on Line 30, this charge has  
23 already been accounted for in connection with the portion of the  
24 Amended Claim listed on Line 24. As a result, this portion of the  
25 Amended Claim will be disallowed.  
26

1           **h. Line 34**

2           Line 34 of the Claim Schedule asserts the right to \$3,000. It  
3 does not describe the nature of the claim. However, it refers to  
4 paragraph 9 of the March 20 Order. Paragraph 9 of the March 20  
5 Order awards a 1989 Jeep to the Debtor, assigning it a value of  
6 \$3,000. The Trustee indicates that she is willing to accept the  
7 validity of this portion of the Amended Claim. However, based on  
8 the Trustee's rationale with respect to other items listed on the  
9 Amended Claim, it is unclear why the entire amount of this claim  
10 would be chargeable to the bankruptcy estate. The allowable portion  
11 of this claim would appear to be half this amount: i.e., \$1,500.  
12 The Court will allow this portion of the claim in the amount of  
13 \$1,500.

14           **i. Line 38**

15           Line 38 of the Claim Schedule asserts the right to \$17,569. It  
16 does not describe the nature of the claim. However, it refers to  
17 paragraphs 5F(10) of the April 16 Order. Paragraph 5F(10) of the  
18 April 16 Order provides that various liens granted to the parties'  
19 attorneys against the Residence are junior to various other charges  
20 against the Residence, including the Debtor's obligation to pay  
21 Welty \$950 per month from January 16, 2003 until she terminates her  
22 occupancy of the Residence. The claim is for 18-1/2 months. The  
23 Trustee questions whether Welty is entitled to claim \$950 per month  
24 for the period after the bankruptcy petition was filed: i.e., March  
25 4, 2004. However, given the short time span involved, the Trustee  
26 is willing to concede this point. In this instance, the entire

1 amount of this claim appears chargeable against the bankruptcy  
2 estate's share of the net proceeds. As a result, this portion of  
3 the Amended Claim will be allowed.

4 **j. Lines 36, 40, and 48**

5 Line 36 of the Claim Schedule asserts the right to \$6,130. It  
6 does not describe the nature of the claim. However, it refers to  
7 paragraph 15A & B of the March 20 Order. Paragraph 15A & B of the  
8 March 20 Order refer to two checking accounts at Wells Fargo Bank.  
9 The Debtor is awarded \$1,882 from one account and \$4,248 from the  
10 other for a total of \$6,130. The Trustee indicates that she is  
11 willing to accept this claim as valid. However, as stated above,  
12 the allowable claim appears to be for only half this amount: i.e.,  
13 \$3,065. This amount will be allowed.

14 Line 40 of the Claim Schedule asserts the right to \$8,000. It  
15 does not describe the nature of the claim. However, it refers to  
16 paragraph 12A of the March 20 Order and paragraph 5 of a 4/28/03  
17 order.<sup>3</sup> Paragraph 12A of the March 20 Order provides that the Debtor  
18 is charged \$16,000 for the sale proceeds from the Merck stock. The  
19 claim is for half this amount: i.e., \$8,000. This amount will be  
20 allowed.

21 Line 48 of the Claim Schedule asserts the right to \$11,677.11.  
22 It does not describe the nature of the claim. However, it refers to  
23 paragraph 12E of the March 20 Order and to paragraph 5 of a 4/28/03  
24 order. Paragraph 12E of the March 20 Order refers to a Fidelity  
25

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26 <sup>3</sup>Neither party has provided the Court with a copy of an order  
dated April 28, 2003.

1 Account and charges the Debtor with the receipt of \$23,354 in  
2 community funds from this account. Welty's claim is for half this  
3 amount. The Trustee concedes that this claim appears to be valid.  
4 The Court agrees. Thus, this portion of the Amended Claim will be  
5 allowed.

6 **k. Line 42**

7 Line 42 of the Claim Schedule asserts a claim for \$12,598. It  
8 does not describe the nature of the claim. However, it refers to  
9 paragraph 12B of the March 20 Order and to paragraph 5 of a 4/28/03  
10 order. Paragraph 12B of the March 20 Order refers to a Fidelity  
11 Account. It charges the Debtor with the receipt of \$684. It  
12 reserves jurisdiction as to whether the Debtor should be charged  
13 with an additional \$24,449. The Trustee concedes that Welty is  
14 entitled to a claim for \$684 but disputes that he is entitled to a  
15 claim for the additional \$24,449.

16 The Court agrees that the claim for the additional \$24,449  
17 should be disallowed since Welty has provided no evidence that he is  
18 entitled to any portion of this amount. However, for the reasons  
19 discussed above, the Court concludes that Welty is only entitled to  
20 a claim for half the \$684: i.e., \$342. This portion of the Amended  
21 Claim will be allowed.

22 **l. Lines 44, 46, and 50**

23 Line 44 asserts the right to a claim for \$1,986.24. It does  
24 not describe the nature of the claim. However, it refers to  
25 paragraph 12C of the March 20 Order and to paragraph 5 of a 4/28/03  
26 order. Paragraph 12C of the March 20 Order refers to a Fidelity



1 Account and provides that the funds in the account shall be divided  
2 between the parties. There is no quantification of the amount of  
3 the funds in the account.

4 Line 46 asserts the right to a claim for \$2,009. It does not  
5 describe the nature of the claim. However, it refers to paragraph  
6 12D of the March 20 Order and to paragraph 5 of a 4/28/03 order.  
7 Paragraph 12D of the March 20 Order also refers to a Fidelity  
8 Account and provides that the stock and cash shall be divided  
9 between the parties with no quantification of the amount.

10 Line 50 asserts the right to a claim for \$17,096.42. It does  
11 not describe the nature of the claim. However, it refers to  
12 paragraph 13A of the March 20 order and to paragraph 5 of a 4/28/03  
13 order. Paragraph 13A of the March 20 Order refers to a Fidelity IRA  
14 account and provides that the assets in the account shall be divided  
15 between the parties with no quantification of the amount.

16 Welty has provided no evidence to support his right to a claim  
17 for these awards in the amount stated. The Trustee contends that,  
18 for that reason, the claim should be disallowed. The Court agrees.  
19 This portion of the claim will be disallowed.

20 **m. Line 52**

21 Line 52 asserts the right to a claim for \$5,144.77. It does  
22 not describe the nature of the claim. However, it refers to  
23 paragraph 13B of the March 20 Order and to paragraph 5 of a 4/28/03  
24 order. Paragraph 13B of the March 20 Order refers to a Fidelity IRA  
25 Account and provides that the assets, consisting of \$1,964, shall be  
26 divided between the parties. Welty has provided no evidence to

1 support a claim amount of \$5,144.77. The Trustee concedes that  
2 Welty is entitled to a claim for half the amount in the account:  
3 i.e., \$982. This amount will be allowed.

4 **n. Lines 54 and 56**

5 Line 54 asserts the right to a claim for \$941. Line 56 asserts  
6 the right to a claim for \$2,124. Neither line describes the nature  
7 of the claim. However, Line 54 refers to paragraph 15A of the March  
8 20 Order. Paragraph 15A of the March 20 Order refers to a Wells  
9 Fargo Checking Account and awards the Debtor \$1,882 from this  
10 account. Line 56 refers to paragraph 15B of the March 20 Order.  
11 Paragraph 15B of the March 20 Order refers to a Wells Fargo Checking  
12 Account and awards the Debtor \$4,248 from this account.

13 The Trustee contends that these claims must be disallowed  
14 because, pursuant to the March 20 Order, these amounts were awarded  
15 to the Debtor. The Court disagrees. Moreover, the Trustee's  
16 contention is inconsistent with her reading of the March 20 Order in  
17 other respects. The Court reads the March 20 Order in this context,  
18 as in most the other contexts set forth above, as giving the party  
19 not awarded the asset a claim against the other for half the value  
20 of the asset awarded to that party. However, the Court will  
21 disallow these claims because the allowable portion of these claims  
22 has already been allowed in connection with the claim listed on Line  
23 36. See section B.3-j.

24 **CONCLUSION**

25 The Trustee's motion for summary judgment will be granted in  
26 part and denied in part. Based on the foregoing legal

1 conclusions, before applying the offsets to which the estate is  
2 entitled the Amended Claim appears allowable in the following  
3 amounts:

	<u>Claim Amount</u>	<u>Claim Allowed</u>	
4			
5	Line 4	\$5,000.00	No amount allowed
	Line 6	258.00	\$ 258.00
6	Line 7	617.00	617.00
	Line 8	1,193.00	No amount allowed
7	Line 10	371.60	No amount allowed
	Line 12	2,245.00	No amount allowed
8	Line 14	10.50	No amount allowed
	Line 18	22.50	No amount allowed
9	Line 20	20.00	No amount allowed
	Line 22	17.50	No amount allowed
10	Line 24	6,000.00	No amount allowed
	Line 26	12,924.20	No amount allowed
11	Line 28	6,671.00	\$ 3,335.50
	Line 30	3,200.00	No amount allowed
12	Line 32	1,600.00	No amount allowed
	Line 34	3,000.00	\$ 1,500.00
13	Line 36	6,130.00	3,065.00
	Line 38	17,569.00	17,569.00
14	Line 40	8,000.00	8,000.00
	Line 42	12,598.00	342.00
15	Line 44	1,986.24	No amount allowed
	Line 46	2,009.00	No amount allowed
16	Line 48	\$11,677.11	\$11,677.11
	Line 50	17,096.42	No amount allowed
17	Line 52	5,144.77	982.00
	Line 54	941.00	No amount allowed
18	Line 56	2,124.00	No amount allowed 2,124.00
19	Total:	\$47,345.61	

20 In addition, Welty is entitled to interest at the rate of ten  
21 percent per annum on the amounts allowed, as set forth above, from  
22 the date of the award in the family court order to March 4, 2004.  
23 The Trustee is directed to calculate the amount of this interest.

24 However, the Court concludes that, as a matter of law, the  
25 bankruptcy estate is entitled to assert two offsets against his  
26 claim. The first offset is for the \$78,012.50 overpayment made to

1 Welty earlier in the case plus interest accruing on this  
2 overpayment at the rate of ten percent per annum from the date of  
3 the overpayment to the date of the continued status conference, as  
4 set forth below. The Trustee is directed to calculate this amount  
5 of interest as well.

6 In addition, as set forth in section B-3-d, the bankruptcy  
7 estate is entitled to an offset against the Amended Claim for  
8 \$552.50, representing the expenses of the Residence paid by the  
9 Debtor in excess of the rents collected. If, after the  
10 calculation of interest, the amount of the estate's offsetting  
11 claim exceeds the amount of the portion of the Amended Claim that  
12 the Court has determined to be allowable, the Court will grant the  
13 Trustee's motion for summary judgment, disallowing Welty's claim  
14 in its entirety. If not, the Court will allow Welty's claim  
15 against the estate in the amount of any excess.

16 A status conference on this proceeding is hereby scheduled  
17 for January 18, 2007 at 11:00 a.m. The Trustee is directed to  
18 file and serve a calculation of the interest to which Welty on  
19 the one hand and the estate on the other are entitled, based on  
20 the principles established in this memorandum, by no later than  
21 December 6, 2006. Welty is required to file and serve any  
22 objections to the calculation by no later than December 20, 2006.  
23 The Trustee is directed to file and serve any reply to any such  
24 objection by no later than January 4, 2007.

25 END OF DOCUMENT  
26

COURT SERVICE LIST

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